

BOARD OF APPEALS CASE NO. 5314

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BEFORE THE

APPLICANT: Edward & Cynthia Rybak

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow a patio/deck, pool,
shed and 6 foot fence in the front yard setback;
701 S. Lanark Court, Bel Air**

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OF HARFORD COUNTY

HEARING DATE: January 13, 2003

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Hearing Advertised

Aegis: 12/11/02 & 12/18/02

Record: 12/13/02 & 12/20/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Edward and Cynthia Rybak, Jr., are requesting a variance, pursuant to Section 267-26C(4) and 267-24B(1) of the Harford County Code to allow a patio/deck, pool and shed with a six (6) foot fence within the front yard setback in an R2/COS Urban Residential /Conventional with Open Space District.

The subject parcel is located at 701 Lanark Court, Bel Air, Maryland 21015 and is more particularly identified on Tax Map 49, Grid 1F, Parcel 260, Lot 38. The parcel consists of 0.239 ± acres, is zoned R2/COS and is entirely within the Third Election District.

The Applicant, James Rybak, Jr. appeared before the Hearing Examiner and testified that his property is subject to three (3) front yard setbacks. The property is a corner property located at the intersection of Lanark Court and Redfield Road. Additionally, the parcel backs to MD Route 543. This configuration results in the parcel being subject to three front yards. Proposed is a patio/deck with a 15 foot by 30-foot pool. A shed and 6 foot fence are also planned. According to the Applicant, such structures are commonly found in his neighborhood and the fence will provide both privacy and security along the Route 543 property line. There is also an existing row of evergreens along the Route 543 property line that provides screening. The Applicant pointed out that if his lot was identical in size but located on an interior street with only one front yard setback, he could build the proposed additions and install the pool without the need for any variances, much like other of his neighbors have done.

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Mr. Rybak also pointed out that if the developer had acquired a 10 foot strip of property along Route 543 and designated it “open space”, he would not need the variances he is requesting. Nearly every other neighbor along Lanark Court has applied for and been granted similar variances.

Mr. Anthony McClune appeared as the representative of the Department of Planning and Zoning. The Department recommends approval of the requests. Mr. McClune agreed that the subject parcel is unique. It is subject to three (3) front yard setbacks, which is very unusual in Harford County. Additionally, unlike other developments along Route 543, this developer did not retain a 10-foot strip of open space along Route 543 that would have eliminated the need for such variances. Mr. McClune stated that the Department found the proposed uses and structures compatible with similar uses and structures in this neighborhood and the R2 zone in general and could not conclude that adverse impacts would result from approval. Mr. McClune pointed out that a denial of the requested variance would effectively prohibit any additions in this Applicant’s property. In conclusion, Mr. McClune opined that an approval was consistent with good zoning and planning principals and practices.

There were no persons that appeared in opposition to this request.

CONCLUSION:

The Applicants, Edward and Cynthia Rybak, are requesting a variance pursuant to Section 267-26C(4) and 267-24B(1) of the Harford County Code to allow a patio/deck, pool and shed with a six (6) foot fence within the front yard setback in an R2/COS Urban Residential /Conventional with Open Space District.

Harford County Code Section 267-26C(4) provides:

“No accessory use or structure shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages as specified in § 267-23C, Exceptions and modifications to minimum yard requirements.”

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Harford County Code Section 267-24B(1) provides:

“Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”

Harford County Code Section 267-11 provides:

- “A. Except as provided in Section 267-41.1.H, variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:**
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.**
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.**
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.**
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”**


The Hearing Examiner, for the reasons stated by both the Applicant and the Department of Planning and Zoning, agrees that this parcel is unique. The proposed uses and structures are compatible with similar uses and structures commonly allowed and found in the R2 zone and it is difficult to foresee any adverse impact to adjoining or neighboring property owners as a result of an approval of the subject request. A denial of the request would operate to deprive the Applicant of uses commonly allowed to others residing within the zone.

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For all of the foregoing reasons, the Hearing Examiner recommends approval of the request subject to the following conditions:

1. The Applicant obtains any and all necessary permits and inspections.
2. The existing tree screening located along the Route 543 property line shall be maintained.

Date FEBRUARY 28, 2003



William F. Casey
Zoning Hearing Examiner